

# Municipal Court Recorder

Volume 14

JUNE 2005

No. 5

©2005 Texas Municipal Courts Education Center, Austin. Funded by a grant from the Court of Criminal Appeals.

## Contemporary Prosecutorial Ethical Dilemmas

By Ross Fischer, Assistant Chief Disciplinary Counsel, State Bar of Texas

What legal resources do you keep within reach, easily accessible to the busy municipal prosecutor or judge? The Code of Criminal Procedure? Naturally. The Transportation Code? Of course. How about the Texas Disciplinary Rules of Professional Conduct, which provide the ethical guidelines to which attorneys are held in our state? No? Well, it may be time to reacquaint you with those principles, in light of issues facing municipal courts today. (To download the rules, go to [www.texasbar.com](http://www.texasbar.com).)

Municipal court prosecutors are finding themselves at the intersection of legal and ethical issues. It is important that, while utilizing their discretion, municipal lawyers consider the responsibilities of their profession. This article will consider the

ethical implications of practical scenarios facing municipal courts.

### Pretrial Diversion

*The Issue.* As all municipal prosecutors and judges know by now, recent changes in the law prohibit granting deferred disposition to a person who holds a commercial driver's license (CDL) and is accused of a traffic offense. Defense counsel asks for "pretrial diversion" in exchange for payment of some fine/costs/donation. Can this be done?

### Ethical Obligations & Legal Constraints.

The law does not authorize pretrial diversion in municipal courts, period. Moreover, the Texas Attorney General has held in two opinions that a

prosecutor cannot offer pretrial diversion in exchange for a monetary donation to a charitable organization.<sup>1</sup> Prosecutors should remember that they have an ethical duty to represent the State diligently, and that they have taken an oath to uphold the law.

Many of you have also faced a more creative, and equally questionable, way of dealing with CDL cases...

### FTA Fraud

*The Issue.* By now, most municipal prosecutors have had a CDL defendant, usually through counsel, propose the following: "Just dismiss the moving violation, and we'll happily plead guilty and pay a fine for Failure to Appear (FTA)."

*Dilemmas continued on page 3*

## Magistrate Duties

By James D. Bethke, Task Force on Indigent Defense, Office of Court Administration and Dottie Carmichael, Ph.D., Associate Research Scientist, Public Policy Research Institute (PPRI)

### Introduction

This is the second in a three-part series of articles describing Texas magistrates' responsibilities under the Fair Defense Act passed in 2001. The first article, published in the April-May 2005 *Recorder*, provided an overview of the key actors involved in implementing the law, their responsibilities and the timelines within which they must act. This, the second article, describes the magistrates' role conducting Article 15.17 hearings. The final article will elaborate more specifically on the issues surrounding determining indigence and assigning counsel under the Fair Defense Act. This series is designed to complement trainings being conducted statewide by the Task Force on Indigent Defense.

*Magistrate continued on page 4*

### INSIDE THIS ISSUE

<i>Contemporary Prosecutorial Ethical Dilemmas</i> by Ross Fischer .....	1
<i>Magistrate Duties</i> by James D. Bethke and Dottie Carmichael .....	1
<b>Registration Forms</b>	
Legislative Update .....	8
2006 Registration Form .....	11
<b>Features</b>	
Around the State .....	2
Clerk's Corner .....	12
Collections Corner .....	14
From the Center .....	7
Resources for Your Court .....	13

## Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302  
Austin, Texas 78701  
512/320-8274 or 800/252-3718  
Fax: 512/435-6118  
Website: [www.tmcec.com](http://www.tmcec.com)

**Fair and Impartial Justice for All**

### FY05 TMCA/TMCEC Officers

President: Dan Francis, Robinson  
President-Elect: Steve Williamson, Fort Worth  
1<sup>st</sup> V.P.: Robert Doty, Lubbock  
2<sup>nd</sup> V.P.: Daniel J. Simms, Houston  
Secretary: Luane Petrash, Webster  
Treasurer: Robert C. Richter, Missouri City  
Past-President: Sharon Hatten, Midland

### Directors

Jan Matthews, Lubbock • Ninfa Mares, Fort Worth • Vicki Gerhardt, New London • Robin Smith, Midland • George Bill Robinson, Yorktown • Robin A. Ramsay, Denton • Robert Barfield, Pasadena • Walter Dick Kettler, Beverly Hills • Donna Starkey, Alvin • Phyllis Mathison, Bastrop

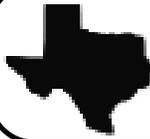
### Staff

- Hope Lochridge, Executive Director
- Ryan Kellus Turner, General Counsel
- Margaret Danforth, Admin. Director
- Tiffany Dowling, Program Attorney/Deputy Counsel
- Margaret Robbins, Program Director
- Jo Dale Bearden, Program Coordinator
- Patricia Russo, Program Assistant II
- Rey Guzman, Multimedia Specialist
- Beatrice Flores, Registration Coordinator
- Lidia Ball, Research Assistant
- Carrie Harper, Communications Assistant

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. Subscriptions are free to all municipal judges, clerks, prosecutors, and support personnel employed by the municipal court. Others may purchase an annual subscription for \$50.

Articles and items of interest not otherwise copyrighted may be reprinted with attribution as follows: "Reprinted from the *Municipal Court Recorder* with permission of the Texas Municipal Courts Education Center."

The views expressed are solely those of the authors and are not those of the TMCA Board of Directors or the staff of TMCEC.



## AROUND THE STATE

### TMCA Fall Annual Meeting

The Texas Municipal Courts Association has scheduled its Annual Meeting on September 15-17, 2005 in San Antonio. The host hotel will be the St. Anthony at 300 E. Travis (800/996-3426 or 210/227-4392). In addition to the annual business meeting of the Association, a legislative update will be offered on changes from the 79<sup>th</sup> Session. Participants are responsible for making and paying for their own hotel reservations. Additional information about the conference may be obtained by writing or calling:

Hon. Robert Doty (TMCA First Vice-President)

Municipal Judge  
City of Lubbock

P.O. Box 2000  
Lubbock, TX 79457

c: 806/775-2492

**FAX (court):** 806/775-2468

**EMAIL:** [rdoty@mail.ci.lubbock.tx.us](mailto:rdoty@mail.ci.lubbock.tx.us)

Hon. Robert C. Richter, Jr. (TMCA Treasurer)

Presiding Judge

City of Missouri City

1350 NASA Parkway, Ste. 200  
Houston, TX 77058

o: 281/333-9229

**FAX:** 281/333-1814

**EMAIL:** [richter333@juno.com](mailto:richter333@juno.com)

### Ethics Task Force

The Task Force on the Code of Judicial Conduct has released its *Final Report and Recommendations*. The *Report* may be accessed on the TMCEC website ([www.tmcec.com](http://www.tmcec.com)) or the State Commission on Judicial Conduct website ([www.scjc.state.tx.us](http://www.scjc.state.tx.us)). A series of open meetings will be scheduled at law schools across Texas this summer so that interested persons may comment on the proposed changes. The dates and sites for the public hearings are:

July 11: South Texas School of Law (Houston) @ 1:30 p.m.

July 21: Texas Tech Law School (Lubbock) @ 1:30 p.m.

July 28: St. Mary's University School of Law (San Antonio) @ 1:30 p.m.

August 11: SMU Law School (Dallas) @ 1:30 p.m.

TMCEC hopes that municipal judges will take time to attend these important hearings. Some of the proposed changes include judges' involvement with charitable organizations, fundraising, businesses, and political activity.

### GCAT Conference

The Governmental Collectors Association of Texas (GCAT) is offering its 6<sup>th</sup> *Annual Court Collections Conference & Workshop* on July 27-29, 2005 at the Marriott Waterway Resort & Conference Center in The Woodlands. See page 13 of this newsletter for additional information.

### 20+ Years

In an earlier *Recorder*, TMCEC published the names of judges and court support personnel who had 20 or more years working in municipal courts. We missed Sharon West, a Senior Court Clerk in the Irving Municipal Court, who has been employed there 28 years. Congratulations, Sharon.

*Ethical Obligations & Legal Constraints.*

The first question to ask is whether the charge (of FTA) is supported by probable cause. Disciplinary Rule 3.09(a) prohibits prosecutors from prosecuting charges that are not supported by probable cause.

As for changing the nature of an offense, the Attorney General has stated that a court cannot enter a judgment for a non-moving violation when the defendant has been charged with a moving violation.<sup>2</sup> Further, the AG goes on to warn against filing charges not supported by probable cause, and hints that prosecutors may run afoul of criminal laws prohibiting aggravated perjury and the tampering with a governmental record.

Additionally, it is important to remember that the new CDL laws have been enacted in response to federal recommendations. The practice of routinely amending CDL violations to allege some other type of offense may raise issues of whether the court is “masking” the types of offenses being handled.

**Who’s the Boss?**

*The Issue.* Members of the city council express displeasure with the way the city prosecutor handles some cases. But hey, the prosecutor doesn’t represent the city – although the city pays them, houses them, provides a court, and supplies ordinances to enforce. This may become especially tricky for those attorneys who both prosecute in municipal court and advise the city on civil matters. What ethical considerations does a municipal practitioner face in such a situation?

*Ethical Obligations & Legal Constraints.*

The bottom line: when prosecutors set foot in the courtroom, they represent the State of Texas. Remember the requisites of a complaint:<sup>3</sup> it is “by the authority of the State of Texas,” and “against the peace and dignity of the State of Texas.” A prosecutor’s responsibility is to the State, and the primary duty is to see that justice is done.<sup>4</sup> Attorneys should make their role clear to city staff and leaders. Perhaps the best way to defuse this situation is to try these cases, and allow the fact-finders to determine the appropriate outcome.

In fact, setting cases for trial may be the most certain way of avoiding these ethical quandaries. By giving CDL holders the option of pleading guilty or going to trial, the prosecutor can avoid altogether the creative yet questionable solutions being proposed. Likewise, by trying cases, prosecutors can let juries determine the appropriate outcome and sanction, freeing themselves from any improper questioning by city officials.

The answers to the ethical quandaries outlined above will not always be clear. But these common scenarios have ethical, as well as practical and legal, implications for the municipal lawyer. The law rightfully empowers prosecutors and judges with a great deal of discretion; but be sure to use that discretion in a manner that comports with the professional obligations owed to our profession.

The laws affecting municipal courts change quickly, as do the strategies for defending against them – the ethical duty of attorneys, however, is constant. 🗡️

---

<sup>1</sup> JC-0042 and JC-0119.

<sup>2</sup> AG Opinion H-1294.

<sup>3</sup> Tex. Code Crim. Pro. Art. 45.019.

<sup>4</sup> Tex. Code Crim. Pro. Art. 45.021(d).

---

## Recent Ethics Opinions

The Judicial Ethics Committee of the Judicial Section of the State Bar of Texas issues opinions on ethical issues faced by Texas judges. Although these are not binding on the Judicial Conduct Commission, the reasoning of these opinions is insightful.

A municipal judge may request an ethics opinion by writing Judge Stephen B. Ables, 216 District Court, 700 Main Street, Kerrville, TX 78628-5386 (telephone 830/792-2290).

### **Ethics Opinion Number 291 (2005)**

#### **Legal Representation of Judge or Court Staff by County Attorney**

**QUESTION:** Would it be a violation of the Code of Judicial Conduct for a judge or the judge’s staff to be represented by the county attorney in court proceedings wherein the judge and/or the court staff have been sued in

their official capacity, even though the judge presides over cases in which the county attorney, or an assistant county attorney, represents the State in mental health and indigent guardianship matters, and the county in various areas of civil litigation involving its various departments, agencies and programs?

**ANSWER:** No. The Committee expresses no opinion concerning the legality of any given type of legal representation. Legal representation by the county attorney is established by the Constitution and laws of the State of Texas. Assuming that a given type of representation is authorized by law, and further that there are no other facts present that would otherwise require recusal or disqualification under Canon 3(B)(1), the Committee is of the opinion that the judge can be represented by the county attorney and continue to preside over other matters in which the county attorney is appearing as legal counsel.

## **Magistrates Duties**

Texas law requires that any individual detained in custody be given an opportunity to appear before a magistrate promptly after arrest. Guidelines for this post-arrest proceeding, informally referred to as the “magistration,” are specified in Article 15.17 of the Code of Criminal Procedure. This article reviews the primary responsibilities of magistrates in conducting the Article 15.17 hearing, a vital component of due process for the protections it provides against unjust detention.

### **Article 15.17 Hearings**

Though the term “magistration” is not actually found in the law, it is commonly used to describe the Article 15.17 hearing. A magistration is distinct from an “arraignment,” though the expressions are sometimes incorrectly used interchangeably. Article 26.02 of the Code of Criminal Procedure specifies that an arraignment takes place for the purpose of fixing the identity of the accused and taking his or her plea. The terms “initial appearance” and “probable cause hearing” more accurately describe the Article 15.17 hearing but are seldom used.<sup>1</sup>

Because Article 15.17 does not provide for an adversarial proceeding like a trial or an examining trial, generally, no right to appointed counsel attaches at this stage of proceedings.<sup>2</sup> Still, it is not uncommon for courts to choose to appoint counsel at the time of magistration. Access to counsel in a timely manner is an important element to ensuring that a person receives a fair trial.

### **Prompt Probable Cause Determination**

Though Article 15.17 does not explicitly mention probable cause determinations, appellate courts have held that this is an essential function of

the magistrate. If arrest is by a warrant, no further inquiry is needed.<sup>3</sup> However, in arrests without a warrant, the magistrate must make an independent judicial determination that there is probable cause to detain the defendant or require a bond prior to release.<sup>4</sup>

The magistrate’s review of probable cause should be based on sworn testimony or a written affidavit presenting the facts of the case and the circumstances of the arrest.<sup>5</sup> A common sense approach considering all the information available should be used to determine whether there is a fair probability that the arrestee committed the offense with which s/he is charged.<sup>6</sup>

Article 17.033 of the Code of Criminal Procedure clarifies the appropriate procedure in the event that the magistrate fails to find probable cause for detention or is presented insufficient sworn evidence to make a determination. A person being held for a misdemeanor offense must be released on a bond not to exceed \$5,000 within 24 hours after arrest.<sup>7</sup> If the offense is a felony, then the right to be released matures at 48 hours and the bond may not exceed \$10,000.<sup>8</sup> Individuals unable to make a cash or surety bond must be released on a personal bond.<sup>9</sup> Furthermore, until probable cause is established, an individual cannot be held to the terms of any bond.

The only means to extend these detention timelines is if the prosecutor demonstrates sufficient reason why it has not been possible to establish probable cause. If adequate justification is presented, the magistrate may postpone release for up to 72 hours from arrest while additional evidence to detain the defendant is established.<sup>10</sup>

### **The Magistrate’s Warnings**

Another key function of magistration is to make sure defendants are

informed of their rights. Though magistrate’s warnings do not track verbatim the *Miranda* decision or Texas Code of Criminal Procedure Article 38.22, they cover the same basic protections. Arrested individuals must be informed of:

- the charges against him or her and any affidavit on file;
- the right to remain silent;
- the right not to make a statement, and that any statement made can and may be used against the individual in court;
- the right to stop any interview or questioning at any time; and
- the right to have an examining trial (felonies only).

Specifically regarding access to legal representation, magistrates must inform arrestees of:

- the right to have an attorney present prior to and during any interview or questioning by peace officers or attorneys representing the State;
- the right to hire an attorney;
- the right to request appointment of counsel if the person cannot afford counsel; and
- procedures for requesting appointment of counsel.

In addition to informing individuals of these rights, magistrates must also provide reasonable assistance to ensure arrestees are able to complete the forms requesting appointed counsel at the Article 15.17 proceeding. This requirement was added as a provision of the Fair Defense Act.

Upon giving these warnings, the magistrate should also ask if the arrestee understands these rights. If the arrestee indicates a lack of understanding, the magistrate has a duty to clarify the meaning.

### **Bail and Related Issues**

The general policy of Texas criminal

---

jurisprudence is that individuals should not be incarcerated prior to trial. To facilitate release, a right to bail is specified in Article 1, Section 11 of the Texas Constitution. The Article 15.17 hearing occurs promptly after arrest largely so that bond amounts and conditions can be set without delay and time in detention can be minimized.

### Setting Fair Bail

Article 1, Section 13 of the Texas Constitution provides that “excessive bail shall not be required.” A recent study examining bond practices in four Texas counties found anecdotal evidence that political factors can sometimes play a role.<sup>11</sup> Bond might be set higher, for instance, if the crime was against a politically influential individual or if local law enforcement agents felt the defendant should be punished for their behavior during arrest.

To determine bail, courts should rightly be guided by five factors set out in Article 17.15 of Code of Criminal Procedure: (1) The bail should be high enough to assure compliance on the part of defendants, (2) but not so high as to serve as an instrument of oppression. (3) The nature of the offense and the circumstances under which it was committed should be considered, (4) as should the defendant’s ability to make bail. To help the court make a decision, individuals may be requested to submit proof of their financial circumstances. (5) The future safety of a victim of the alleged offense and of the community shall be considered.

Indicators of flight risk such as the accused’s work record, family and community ties and length of residency can be considered in making a bond determination. Also relevant are evidence of a prior criminal record, the accused’s conformity with previous bond conditions and the existence of other outstanding bonds.<sup>12</sup>

Bond recommendations provided to magistrates by county and district judges, though not appropriate as an absolute criterion, can provide useful guidelines to help standardize county-wide bond-setting practices.<sup>13</sup> Multiple opportunities for bond review may also help protect defendants against excessive bond. Potential venues include local magistrations conducted by municipal judges, centralized magistrate hearings conducted after booking at county jail and bond reduction hearings conducted after indigent defendants still in detention have been appointed counsel.

### Release Because of Prosecutorial Delay

If probable cause is established at the Article 15.17 hearing but the prosecutor has not filed formal charges, there are limits to the amount of time defendants can be held. Individuals who have not been charged, and who are unable to make bond, must be released on either a reasonable bond that the defendant can make or on personal bond if:

- the defendant is charged with any grade of felony and has been incarcerated for 90 days;<sup>14</sup>
- the defendant is charged with a misdemeanor punishable by 180 days in jail or more and has been incarcerated for 30 days;<sup>15</sup>
- the defendant is charged with a misdemeanor punishable by 180 days in jail or less and has been incarcerated for 15 days;<sup>16</sup> or
- the defendant is charged with a misdemeanor punishable by fine-only and has been incarcerated for five days.<sup>17</sup>

Because the magistrate conducting the Article 15.17 hearing retains authority over the defendant’s charge until a charging instrument (*i.e.*, information, complaint or indictment) is filed in a court with jurisdiction, the magistrate arguably retains responsibility for

releasing defendants according to these guidelines.<sup>18</sup> Once the charging instrument has been filed, however, the magistrate has no further responsibility for the case.

### Out of County Arrests

If one county issues a warrant and the individual named is arrested in a different county, under Article 15.18 of the Code of Criminal Procedure, the defendant should be taken before a magistrate of the county where the arrest takes place. To minimize time in detention, the magistrate must first take bail, then immediately transmit the bond posted to the court that issued the warrant. If the accused is unwilling or unable to give bail, s/he should be committed to jail in the county where the arrest occurred.<sup>19</sup> The magistrate authorizing the commitment must then immediately notify the sheriff of the county that issued the warrant. This notice may be given by telegraph, by mail or by other written form of communication.

The sheriff of the county issuing the warrant is then responsible for transporting the defendant back to the proper court or magistrate. If the officer fails to take charge of the prisoner within ten days of commitment, however, the magistrate in the arresting county may discharge the individual from custody.

### Making the Record

A record must be made of the events of each Article 15.17 hearing. The record should document the date and time of the magistration proceeding, include the probable cause determination and provide evidence that the defendant was informed of the rights addressed in the magistrate’s warnings. The record must also demonstrate that the individual was informed of the right to request assigned counsel, and indicate whether s/he asked for an appointed attorney. The Article 15.17 record is not only an important mechanism for

accountability, it also impacts the speed with which legal representation can be appointed. Magistrates have an obligation to complete the required documentation accurately, and to transmit requests for counsel promptly to the appointing authority in order to safeguard defendant rights.

### Conclusion

The duties of the magistrate outlined in this article highlight the central role these officials play in protecting justice during the pretrial phase. Magistrates have significant responsibility for ensuring that defendants are aware of their rights and for setting bail to permit their release from detention. The Article 15.17 hearing also provides important safeguards against unlawful detention in instances where there is insufficient evidence that individuals committed the crime of which they are accused, or in instances where formal charges are delayed. Magistrates' records provide a trail of accountability, and serve as a cornerstone of the criminal justice system. 

## 2005 Poverty Guidelines Chart

Each year the U.S. Department of Health and Human Services provides notice of the new federal poverty guidelines by publishing them in the Federal Register. In February 2005, the guidelines were updated to account for an increase in prices measured by the Consumer Price Index. The notice and guidelines were printed in the Federal Register, Vol. 70, No. 33. The guidelines are often used to determine eligibility for federal programs, legal aid services and other public services provided by non-profits. For example, these are the guidelines used to determine eligibility for food stamps and for Legal Aid services. The guidelines are **not** a substitute for a judicial determination of indigency. Determinations of indigence must be made pursuant to the local procedures adopted by your jurisdiction pursuant to Article

26.04(l)-(o), Code of Criminal Procedure. Your jurisdiction's local procedures are available online at <http://tfid.tamu.edu/>.

*Persons in family unit*

*Poverty guideline*

### 2005 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

1 .....	\$ 9,570
2 .....	12,830
3 .....	16,090
4 .....	19,350
5 .....	22,610
6 .....	25,870
7 .....	29,130
8 .....	32,390

For family units with more than 8 persons, add \$3,260 for each additional person.

*Federal Register, Vol. 70, No. 33, February 18, 2005, pp. 8378-8375.*

<sup>1</sup> Clay Abbott, Former TMCEC General Counsel, *Magistration under Code of Criminal Procedure, Article 15.17*. TMCEC Recorder, Vol. 9, No. 5.

<sup>2</sup> Adversarial judicial criminal proceedings include — formal charges, preliminary hearings, indictments, misdemeanor complaints, arraignments, but do not include any proceeding not deemed a “critical stage” of the criminal process or hearings conducted under Article 15.17 of the Texas Code of Criminal Procedure. See: *United States v. Gonveia*, 467 U.S. 180, 187-89, 104 S.Ct. 2292, 2297-98, 81 L.Ed.2d 146 (1984); *United States v. Ash*, 413 U.S. 300 (1973); *Cobb v. State*, 2000 WL 275644 (Tex. Crim. App. 2000); *Hidalgo v. State*, 983 S.W.2d 746, 752 (Tex. Crim. App. 1999); *Green v. State*, 934 S.W.2d 92 (Tex. Crim. App. 1996).

<sup>3</sup> *Gerstein v. Pugh*, 420 U.S. 103 (1975); *Ex Parte Garcia*, 547 S.W. 2d 271 (Tex. Crim. App. 1977).

<sup>4</sup> *Sanders v. City of Houston*, 543 F. Supp. 694 (S.D. Tex. 1982) affirmed 741 F.2d 1379 (5th Cir. 1984).

<sup>5</sup> Texas Constitution, Article 1, Section 11.

<sup>6</sup> *Illinois v. Gates*, 462 U.S. 213 (1983);

*Eisenbauer v. State*, 754 S.W.2d 159 (Tex. Crim. App. 1988).

<sup>7</sup> Article 17.033(a), C.C.P.

<sup>8</sup> Article 17.033(b) C.C.P.

<sup>9</sup> *County of Riverside v. McLaughlin*, 111 S.Ct. 1661 (1991).

<sup>10</sup> Article 17.033(c) C.C.P.

<sup>11</sup> *Study to Assess the Impacts of the Fair Defense Act on Texas Counties* (January, 2005). Public Policy Research Institute, Texas A&M University ([www.courts.state.tx.us/oca/tfid/Resources.htm](http://www.courts.state.tx.us/oca/tfid/Resources.htm)).

<sup>12</sup> *Maldonado v. State*, 999 S.W.2d 91, 93 [citing *Ex parte Rubac*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. (1981))].

<sup>13</sup> It is well known that the Attorney General in Opinion DM-57 opined that the amount of bail “must be determined by the Constitution and rules set out in Article 17.15, rather than by any arbitrary schedule of bond amounts.” What is not as well known is that the efficacy of the “use of schedules” has not been addressed by the Court of Criminal Appeals. Dix and Dawson in their treatise on *Criminal Practice and Procedure, Texas Practice*, Volume 41, pages 328-329 provide some helpful examples of how “schedules” might be used

properly. “First it may be proper if used only as a basis for analysis rather than a final determinant.” Next, in light of the complexities of the statutory factors, “use of some mechanical benchmark may be necessary, and a schedule could certainly be such a benchmark.”

<sup>14</sup> Article 17.151(1), C.C.P.

<sup>15</sup> Article 17.151(2), C.C.P.; *Jones v. State*, 803 S.W.2d 712 (Tex. Crim. App. 1991).

<sup>16</sup> Article 17.151(3), C.C.P.

<sup>17</sup> Article 17.151(4), C.C.P.

<sup>18</sup> *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978), holds the filing of a felony complaint in justice or municipal court will generally give the court in which that document is filed jurisdiction until the complaint is dismissed by the judge of that court or superseded by formal felony charges.

<sup>19</sup> Article 15.19(a), C.C.P.



# FROM THE CENTER

## TMCEC Bench Books at a Discount

TMCEC has a large inventory of the following books and is offering them at discounted rates:

<i>Publication Name</i>	<i>Original Price</i>	<i>Discounted Price</i>
TMCEC <i>Bench Book</i>	\$20.00	\$10.00
<i>Level II Certification Guide</i>	\$25.00	\$10.00

Quantities are limited, so order ASAP. Checks should be made payable to TMCEC. Shipping and handling is included in the discounted price. Purchase may be paid for by credit card – please call Lidia Ball at TMCEC (800/252-3718). There is a \$2 transaction fee for a credit card charge.

## Free Certification Re-test in August!

Need to re-test? Want to re-rest before the legislative changes are incorporated into the exam? Re-test for FREE at the TMCEC Legislative Updates (see dates and locations below), schedule a re-test at TMCEC (call 800/252-3718 to schedule a date and time), or test at a TCCA chapter test site (check with your local chapter for more information). The free re-test period is only for the month of August. Contact Jo Dale Bearden at 800/252-3718 or bearden@tmcec.com for more information.

Legislative Update Testing from 1:00–5:00 p.m. at each site.

Houston	August 7, 2005	Omni Houston Westside
Lubbock	August 10, 2005	Holiday Inn Hotel and Towers
Austin	August 15, 2005	Hyatt Regency Austin

Visit the TMCEC website for a test registration form: [www.tmcec.com/files/04cert-test-appl.pdf](http://www.tmcec.com/files/04cert-test-appl.pdf).

## Level III Reading List Revised

The Reading List for Level III Certification has been revised. The list was reduced to 16 books and covers the following topics: caseload management, financial management, leadership, management, teamwork and motivation, strategic planning, human resources, and court security. Go to [www.tmcec.com/clerkcert/certprog.html](http://www.tmcec.com/clerkcert/certprog.html) to view and print the new list.

Those who have taken a part of Level III under the previous book list have until December 31, 2005 to complete the exam developed from the original book list. Study questions and the exam for the new book list will be available September 1, 2005. Beginning January 1, 2006, all participants will be required to test on the new books. Contact Jo Dale Bearden at 800/252-3718 or bearden@tmcec.com for questions relating to your specific situation and the resulting timetables.

## Legislative Updates

The TMCEC staff is looking forward again to offering a series of Legislative Updates in August 2005. These elective programs are six-hour in length. They do not count toward mandatory judicial education requirements for judges, but do offer MCLE credit for attorneys and certification credit for clerks in the certification program. The registration fee is \$50, which includes lunch and course materials. Participants are responsible for making and paying for their own hotel reservations. Please register using the registration form on page 8 of this newsletter.

August 8, 2005	Houston	Omni Houston Westside	281/556-8338
August 11, 2005	Lubbock	Holiday Inn Towers	806/763-1200
August 16, 2005	Austin	Hyatt Regency Austin	512/477-1234

The registration deadlines for the Legislative Updates are in mid-July. **Registration, however, is based on first-come-first-serve, so register early with TMCEC to ensure a seat in the program.** Contact the hotel and reserve a room ASAP, as there are a limited number of \$80 per night conference room rates available.

# Legislative Update Registration Form



TMCEC will send you hotel information upon receipt of your registration form and the \$50 fee (\$100 for defense lawyers & council members). Please add \$2 for all credit card payments. If you need lodging, you will have to make your own reservation and cover the cost with the hotel.

Please check the program you would like to attend and return completed form with the registration fee to TMCEC. For credit card payments, please add \$2 for each registration.

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> <b>HOUSTON</b><br>August 8, 2005<br>Omni Houston Westside<br>Telephone: 281/558-8338<br>Registration Deadline: 7/11/05 | <input type="checkbox"/> <b>LUBBOCK</b><br>August 11, 2005<br>Holiday Inn Towers<br>Telephone: 806/763-1200<br>Registration Deadline: 7/18/05 | <input type="checkbox"/> <b>AUSTIN</b><br>August 16, 2005<br>Hyatt Regency Austin<br>Telephone: 512/477-1234<br>Registration Deadline: 7/20/05 |
|---|---|--|

**REGISTRATION FORM:**

Name (please print legibly): \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ FAX: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Check all that apply:**

- |  |  |   |   |                                     |   |
|--|--|---|---|-------------------------------------|---|
| <input type="checkbox"/> Full Time               | <input type="checkbox"/> Part Time                 | <input type="checkbox"/> Attorney             | <input type="checkbox"/> Non-Attorney             | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Defense Lawyer (\$100) |
| <input type="checkbox"/> Presiding Judge         | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Mayor or Council (\$100) |                                     |   |
| <input type="checkbox"/> Court Administrator     | <input type="checkbox"/> Court Clerk               | <input type="checkbox"/> Deputy Court Clerk   | <input type="checkbox"/> Other (\$100):           |                                     |   |
| <input type="checkbox"/> Bailiff/Warrant Officer |  |   |   |                                     |   |

I certify that I am currently serving as a municipal judge, city prosecutor, defense lawyer practicing in municipal court, city official, software vendor, or court support personnel in the State of Texas. I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The registration fee is refundable if the Center is notified of cancellation in writing 10 days prior to the seminar.

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_

**PAYMENT INFORMATION:** (\$2.00 is added for each registration with credit card payment.)

- \$50** Check Enclosed (Make checks payable to TMCEC.)  **\$52** Credit Card (Complete the following.)

- For participants who do not work in a municipal court:  **\$100** Check Enclosed (Make checks payable to TMCEC.)  **\$102** Credit Card (Complete the following.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:	Credit Card Number	Expiration Date	Verification Number (found on back of card)
<input type="checkbox"/> MasterCard	_____	_____	_____
<input type="checkbox"/> Visa	Name as it appears on card (print clearly): _____		
	Authorized Signature _____		

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.  
Fax registration forms with credit card information to 512/435-6118.

# TMCEC FY05 PROGRAM AUDIOTAPES

The following are audiotape recordings from TMCEC's *Odessa Regional 12-Hour Judges and Clerks Programs*. Duplicates are available through the Center at no charge; one set per court.



## JUDGES PROGRAM:

- Juvenile Alcohol Offenses* — Edward Spillane, Municipal Judge, College Station
- Language Interpreters* — Ted Wood, Special Counsel for Trial Courts, Office of Court Administration, Austin
- Federal & State Case Law Update* — Ryan K. Turner, General Counsel, TMCEC
- Driver's License Offenses* — Linda Frank, Chief Prosecutor, Arlington
- Sovereign Defendants* — Ilse Bailey, Assistant City Attorney, Kerrville
- 21st Century Traffic Dilemmas: Things with Wheels* — Tiffany Dowling, Program Attorney & Deputy Counsel, TMCEC
- Access to Justice* — Martin Cirkiel, Mental Health Magistrate, Travis County Probate Court No. 1
- Ordinance Issues: Junked Vehicles* — Candace Chappell, Senior Prosecutor & City Attorney II, Irving
- Ethics of Fine Collection* — Jim Lehman, Collections Specialist, Office of Court Administration, Austin
- Fraud Prevention* — Rene Henry, Collections Projects Manager, Office of Court Administration, Austin
- Ethics: TV Justice and Reality in the Courtroom* — Robin A. Ramsay, Presiding Judge, Denton
- Expunction* — W.E.B. Blackmon, Former Municipal Judge, Houston
- Attorney General Opinion Update* — Michael Acuna, Municipal Judge, Dallas
- DSC and Deferred Disposition* — Stewart W. Milner, Municipal Judge, Arlington and Kathryn Wells-Vogel, CMCC, Court Administrator, Victoria
- Magistrate Duties: Juvenile Statements* — Ryan K. Turner, General Counsel, TMCEC
- Ordinance Issues: Rubbish and Refuse* — Lisa Hayes, Assistant City Attorney, El Paso
- Judgments and Non-Contested Cases* — Stewart W. Milner, Municipal Judge, Arlington and Kathryn Wells-Vogel, CMCC, Court Administrator, Victoria

## CLERKS PROGRAM:

- Understanding the Commission on Judicial Conduct Processes* — Tom Broussard, Counselor, Commission on Judicial Conduct
- DPS/FTA Program and Outside Vendors* — Margaret Robbins, Program Director, TMCEC
- Open Records* — Ted Wood, Special Counsel for Trial Courts, Office of Court Administration, Austin
- Juveniles and Minors (JNA Procedures)* — Margaret Robbins, Program Director, TMCEC
- Advanced Telephone Techniques* — Jim Lehman, Collections Specialist, Office of Court Administration, Austin
- Court Security* — Allen Gilbert, Municipal Judge, San Angelo
- Fraud Prevention* — Rene Henry, Collections Projects Manager, Office of Court Administration, Austin (same as judges)
- Processing City Ordinance Complaints* — Ryan K. Turner, General Counsel, TMCEC
- Court Costs & Financial Management* — Rene Henry, Collections Projects Manager, Office of Court Administration, Austin
- Overview of Processing Cases* — Margaret Robbins, Program Director, TMCEC
- DSC and Deferred Disposition* — Stewart W. Milner, Municipal Judge, Arlington and Kathryn Wells-Vogel, CMCC, Court Administrator, Victoria (same as judges)
- Judgments and Non-Contested Cases* — Stewart W. Milner, Municipal Judge, Arlington and Kathryn Wells-Vogel, CMCC, Court Administrator, Victoria (same as judges)

**Return order to TMCEC at 1609 Shoal Creek Blvd. #302, Austin, TX 78701 or fax to 512/435-6118.**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Court: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

# 2005-2006 TMCEC Academic Schedule At-A-Glance

Conference:	Dates(s):	City:	Hotel Information:
Elective Judges/Clerks Conference (TMCA)	September 16-17, 2005	San Antonio	St. Anthony
32-Hr New Clerks	September 19-23, 2005	Austin	Holiday Inn Northwest
12-Hr Regional Clerks Conference	October 25-26, 2005	Tyler	Holiday Inn Select
12-Hr Regional Judges Conference	October 27-28, 2005	Tyler	Holiday Inn Select
12-Hr Regional Judges/Clerks Conferences	November 8-9, 2005	Austin	Omni Southpark
Judges Traffic Technology School (ABA)	November 16-18, 2005	Dallas	Westin Park Central
32-Hr New Judges/Clerks Conferences	December 5-9, 2005	Austin	Doubletree Hotel
Court Administrators: Special Topic Seminar	December 5-7, 2005	Austin	Doubletree Hotel
12-Hr Low Volume Seminar	January 10-11, 2006	Horseshoe Bay	Marriott Resort
12-Hr Regional Judges/Clerks Conferences	January 18-19, 2006	San Antonio	Crowne Plaza Riverwalk
12-Hr Prosecutors Conference	February 8-9, 2006	Irving	Harvey Hotel DFW
12-Hr Bailiffs/Warrant Officers Conference	February 8-9, 2006	Irving	Harvey Hotel DFW
12-Hr Regional Judges/Clerks Conferences	February 20-21, 2006	Plano	Marriott Legacy
12-Hr Regional Judges/Clerks Conferences	February 28-March 1, 2006	Galveston	San Luis Resort/Spa
Level III Assessment Clinic ( <i>Tentative</i> )	March 17-19, 2006	Austin	T.B.A.
12-Hr Court Administrators Conference ( <i>Tentative</i> )	March 2006	Horseshoe Bay	Marriott Resort
12-Hr Regional Judges/Clerks Conferences	April 20-21, 2006	Lubbock	Holiday Inn Park Plaza
12-Hr Regional Attorney Judges Conference	May 1-2, 2006	S. Padre Island	Radisson Resort
12-Hr Regional Non-Attorney Judges Conference	May 3-4, 2006	S. Padre Island	Radisson Resort
12-Hr Regional Clerks Conference	May 8-9, 2006	S. Padre Island	Radisson Resort
12-Hr Low Volume Seminar	May 25-26, 2006	Corpus Christi	Omni Bayfront
12-Hr Prosecutors Conference	May 25-26, 2006	Corpus Christi	Omni Bayfront
12-Hr Low Volume Seminar	June 27-28, 2006	College Station	Hilton Conference Center
12-Hr Bailiffs/Warrant Officers Conference	June 27-28, 2006	College Station	Hilton Conference Center
Level III Assessment Clinic ( <i>Tentative</i> )	June 2006	New Braunfels	T.B.A.
12-Hr Regional Judges/Clerks Conferences ( <i>Tentative</i> )	July 12-13, 2006	El Paso	Camino Real
32-Hr New Judges/Clerks Conferences	July 24-28, 2006	Horseshoe Bay	Marriott Resort

Seminar Date: \_\_\_\_\_ Seminar Site: \_\_\_\_\_  
 Type of Program:  Judge  Clerk  Court Administrator  Prosecutor  Bailiff/Warrant Officer\*  
 Legislative Update (\$50 program fee)  Assessment Clinic (\$100 program fee)

*TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.*

Name (please print legibly): Last Name: \_\_\_\_\_ First Name : \_\_\_\_\_ MI: \_\_\_\_\_  
 Names also known by: \_\_\_\_\_ Female/Male: \_\_\_\_\_  
 Position held: \_\_\_\_\_  
 Date appointed/Hired/Elected: \_\_\_\_\_ Years experience: \_\_\_\_\_  
 Emergency contact: \_\_\_\_\_

**HOUSING INFORMATION** (Not for Legislative Updates)

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.
- I need a room shared with a seminar participant. [Please indicate roommate by entering seminar participant's name: \_\_\_\_\_ (Room will have 2 double beds.)]
- I need a private double-occupancy room, but I'll be sharing with a guest. [I will pay additional cost, if any, per night]  
 I will require:  1 king bed  2 double beds
- I do not need a room at the seminar.

How will you be traveling to seminar?  Driving  Flying  
 Arrival date: \_\_\_\_\_  Smoker  Non-Smoker

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ FAX: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

**STATUS** (Check all that apply):

- Full Time  Part Time  Attorney  Non-Attorney
- Presiding Judge  Associate/Alternate Judge  Justice of the Peace  Mayor
- Court Administrator  Court Clerk  Deputy Court Clerk  Other: \_\_\_\_\_
- Bailiff/Warrant Officer  Prosecutor \_\_\_\_\_

**\*Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiff/Warrant Officer programs.

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Municipal Court of: \_\_\_\_\_

*I certify that I am currently serving as a municipal court judge, city prosecutor or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. I will cancel by calling the Center. If I must cancel on the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials and possibly housing (\$80 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. \*Payment is required ONLY for the Prosecutor Programs, Assessment Clinics and the Legislative Updates; payment is due with registration form. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive refund.*

Participant Signature \_\_\_\_\_

Date \_\_\_\_\_

**PAYMENT INFORMATION** (Level III Assessment Clinics and Prosecutors Programs):

- Check Enclosed (Make checks payable to TMCEC.)
- Credit Card (Complete the following; \$2.00 will be added for each registration made with credit card payment.)

Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)

Credit card type:	Credit Card Number	Expiration Date	Verification Number <small>(found on back of card)</small>
<input type="checkbox"/> MasterCard	_____	_____	_____
<input type="checkbox"/> Visa	Name as it appears on card (print clearly): _____		
	Authorized Signature _____		

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701.  
 Fax registration forms with credit card information to 512/435-6118.

## Recurring Court Questions

By Margaret Robbins, Program Director, TMCEC

For this column, I reviewed questions from the 800-line and from my email and decided to address some issues that keep popping up.

### Signature Stamps and Electronic Signatures

Most of the questions about signature stamps and electronic signatures concern judges' signatures and whether the judge must be present when his or her signature is affixed to a document. The answer is "yes," the judge must be present because a signature means that the judge has knowledge of the information contained in the document and agrees to having his or her signature on the document. See *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987), which cites Attorney General Opinion JM-373 (1985) regarding the presence of the person whose signature is being stamped. In *Daniels*, a Texas justice of the peace delegated his authority to affix his rubber stamped signature to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably Attorney General Opinion JM-373 (1985), which states that a judge may not delegate authority to affix her or his signature unless the signature is affixed under the judge's personal supervision. Therefore, regardless of whether the signature is being stamped or being affixed electronically, the judge must review and approve the document before his or her signature is affixed.

### Time Payment Fees

Defendants must pay a \$25 time payment fee on or after the 31<sup>st</sup> day

after the judge signs a judgment on a case if any part of the fine, costs or restitution is not paid. See Section 133.103, Local Government Code. If a defendant discharges payment of the fine by community service or jail credit and the court collects no money, the city does not have to pay the State their portion of the fee. If a defendant pays any part of the fine and costs by money and any part of the payment is made on or after the 31<sup>st</sup> day after judgment, the defendant is liable for the time payment fee.

If a defendant fails to complete a driving safety course or the terms of deferred disposition and the judge enters a final judgment, the defendant does not have to pay the time payment fee unless the defendant fails to pay the fine before the 31<sup>st</sup> day after the judge signs the final judgment at the end of the deferred or the driving safety course.

### Warrant Fees

The \$50 warrant fee may be collected only if a peace officer processes or executes a warrant or a *capias*. See Article 102.011, Code of Criminal Procedure. Just because a clerk processes the paperwork and a judge issues a warrant, it does not mean that the warrant fee can automatically be collected. This fee is collected only if a peace officer performs some type of service. The officer must either execute the warrant by arresting the defendant or, after attempting to serve the warrant, documents the service. Without documentation in the court file of the officer's execution or processing of the warrant, the court

cannot assess and impose the warrant fee.

If a defendant is arrested on a warrant and the case is later dismissed, the court cannot collect the warrant fee. An example of this is when a defendant charged with the offense of failure to maintain financial responsibility fails to appear, is arrested and then shows proof of valid insurance for the day the offense occurred. In this instance, the court is required to dismiss the charge. Because there is no conviction, even though there was an arrest, the court cannot impose the warrant fee.

### Citations

Who has the authority to issue citations? State law provides only peace officers with authority to issue citations. This authority is found in Section 543.003, Transportation Code, and in Article 14.06(b), Code of Criminal Procedure. Code enforcement officers or animal control officers who are not peace officers do not have authority to issue citations unless their city provides them that authority by ordinance.

The purpose of a peace officer issuing a citation is in lieu of making an arrest. If the officer makes an arrest, the officer does not issue a citation. If the officer is doing an investigation and determines that charges should be filed, the officer does not issue a citation but, instead, files a sworn complaint with the court. The court notifies the defendant of the charges. Many cases handled by code

---

*Recurring Questions continued on page 16*



# RESOURCES FOR YOUR COURT

## Deadline for 2005 Texas Judicial System Annual Report

In order to capture your court's data for the *2005 Texas Judicial System Annual Report*, the Office of Court Administration (OCA) must receive your municipal court monthly activity reports for the state fiscal year 2005 (September 1, 2004 through August 31, 2005) by October 5, 2005.

All municipal courts must submit a monthly court activity report to OCA, even if the court has no activity for the month.

The monthly court activity report collects information needed by the Legislature to make decisions regarding the jurisdiction, structure and needs of the court system. The information is also used by many other entities and individuals: the Comptroller's Office, the Legislative Budget Board, the Department of Public Safety, local judges, city councils, commissioners courts, local and state auditors, the media (especially local newspapers), the Texas Municipal Courts Education Center, research for special interest groups, universities (professors and students), attorneys, individuals running against incumbent judges in elections, and members of the general public.

Reports from September 1992 to the present are available to the public online on the OCA website at [www.dm.courts.state.tx.us/oca/reportselection.aspx](http://www.dm.courts.state.tx.us/oca/reportselection.aspx). Reports of judicial activity must be submitted in a timely manner in order to ensure the completeness and accuracy of these records.

Please call Sandra Mabbett, Judicial Information Technician, at 512/463-1640 if you need assistance with or have questions about the monthly reports.

## GCAT Conference

The Governmental Collectors Association of Texas (GCAT) is offering its *6<sup>th</sup> Annual Court Collections Conference & Workshop* on July 27-29, 2005 at the Marriott Waterway Resort & Conference Center in The Woodlands. Amongst the topics to be discussed: *Improving Court Collections, Law Enforcement & Warrant Officers' Role in Collections, Getting Results (Interviewing, Telephoning, Letters), Inmate Collections, Affordable Technology & Skip Tracing*, and a *Legislative Update*. The registration fee is \$150 for GCAT members and \$175 for non-members. Participants are responsible for making and paying for their own hotel arrangements at the Marriott Waterway (281/367-9797). The GCAT conference rate is \$80 single/\$95 double – room reservations should be made no later than June 27, 2005. For additional information, contact Nadine Jenkins at 936/538-8088 or Jim Lehman at 512/936-0991. TMCEC highly recommends the program for judges, court administrators, clerks, bailiffs, and warrant officers.

## Courthouse Access

The U.S. Access Board has created the Courthouse Access Advisory Committee to develop guidance material on providing access to courthouses for people with disabilities. As part of this effort, the committee is soliciting "best practice" examples of accessibility in new and renovated courthouse design. If you have photographic examples or other graphics that highlight good examples of accessibility in courthouses, please share them with this committee. Information is sought on all types of courthouses and spaces within them. This includes the following:

- courtroom spaces, such as jury boxes, witness stands and judges' benches;
- judges' chambers;
- jury rooms;
- witness rooms;
- mediation and counsel rooms;
- holding cells;
- information and service areas such as clerk and cashiers offices;
- law libraries;
- exterior accessible routes, entrances and drop-off areas; and
- interior building way-finding associated with courthouses.

The format of the final product has not been determined yet, but all examples used will be credited to the designer and photographer. Please send graphic examples to David Calvert at [lawdpc@swbell.net](mailto:lawdpc@swbell.net). Call Marlene Walli Shade, AIA at 703/698-9064 with any questions you may have.



## Setting Up a Collection Program

or Everything You Ever Wanted to Know about Collections that Jim Lehman Didn't Tell You

By Judge Lester Rorick, Pasadena Municipal Court

If you have been following the Legislature, you know that collection programs may not be optional much longer.<sup>1</sup> Nevertheless, collection programs are frequently met with much skepticism on the part of seasoned judges and court clerks alike. Some believe simply that “if it ain't broke, don't fix it;” some have a sincerely held belief that making payment arrangements is a non-delegable judicial function; and some simply resist change of any kind.

At the suggestion of a colleague, I attended my first collections class about two years ago. For some time, I had been troubled by the process (or lack thereof) in determining the particulars of payment plans or entitlement to community service in my court. The problem was not that judges were disinterested, unwilling or unqualified to do the work. Rather, in high volume courts like ours, it was simply impractical for the judge to engage in the amount of inquiry necessary to make an appropriate payment arrangement or determine whether community service ought to be granted. (As you know, some folks will promise anything to simply get out of the building; others have not given any forethought to their finances and just don't know what they can reasonably do; and still others will not be forthright about their income and expenses.) If compliance really is the objective, then the goal of the collection program ought to be to work out an agreement that people can live with rather than have them make a promise that they can't live with. While I was immediately sold on the collection program of the Office of Court Administration (OCA), getting it in place was something of a task. What follows is a

“nuts and bolts” assessment of what it takes to get a program moving.

**STEP ONE. *Know thyself.*** If you want to know whether your collection process is working, you must know where to start. The success of a collection program is measured by what OCA calls a collection ratio. A collection ratio is a fraction, the numerator of which is fines collected and denominator of which is fines assessed. With all due respect to the OCA, a better term would be compliance ratio. I suggest compliance because “payment” can be made in alternative ways including but not limited to community service, jail time served and perhaps even waiver on account of indigence. OCA was kind enough to give me a baseline number when we started out; thereafter it was just a matter of getting with the city's IT (Information Technology) folks to refine the process. Be sure that you understand how your software works before you undertake this step. For example, my software imputes a window fine to each case when it is entered into the computer. If the accused fails to appear, the computer may show an assessed fine. Clearly there is no collection and yet, the collection system has not failed. I, therefore, do not include as assessed fines those fines imputed for no shows unless and until an appearance is made. In the numerator of the fraction, I credit full payment to any person who has completely discharged his or her community service obligation. I notice that there is pending legislation to standardize the method of determining the collection ratio.

**STEP TWO. *Try it out on the clerks.*** Some of my staff was dubious about the collection process and

particularly the follow-up. Historically, this had been simply a function of issuing a *capias pro fine*. So, we devised a simple competition among the several senior clerks. Each took a list of persons behind in fine payments and began to call those persons named therein. The results were both surprising and rewarding. An amazing number of those called apologized, came in and paid. Thus encouraged, the clerks got behind at least that part of the process. We next introduced the financial information form into the collection process. Each person who indicated that he or she needed payment assistance got a clipboard, financial information statement and a pencil. Rather than allow the collection interview to be accomplished by collection clerks, however, it was done by the judge. This exercise satisfied the judges and the clerks that better payment plans are a result of better information. The whole process was now sold, and it was only a matter of staffing to get it rolling.

**STEP THREE. *Personnel—the chicken or the egg.*** The first staffing decision that has to be made is whether to take a collector and make a clerk or take a clerk and make a collector. The collection personnel must, of necessity, possess both skills. After interviewing several seasoned court collectors (whom I couldn't afford), I opted to train as collectors two of my deputy clerks whom I thought possessed the right balance of firmness and compassion to handle the job. For many courts, this may be the best answer. OCA is generous with its assistance and certainly there are many fine classes available, so collection training is not a problem. Promoting from within rewards hard work and

allows the chance for upward mobility within the department. The alternative is to create a higher paying slot in your court and then bring in someone from the outside who has to be trained to understand court procedures. On balance, I think this approach only engenders hard feelings on the part of the existing staff. Moreover, if your clerks are trained as collectors, you have much greater flexibility in covering those difficult holiday and vacation periods.

There is also a hidden staffing expense to the collection process that needs to be carefully thought out. Somebody or something has to transport original court papers from the courtroom to the collection office and then to the cashiers for payment. Most of your court personnel are fully engaged in other tasks. Simply stated, you must either assign an employee to move papers around or come up with an alternative. Our court has recently contracted for the installation of pneumatic tubes to move papers from the court to the collectors and from the collectors to the cashiers. Although these systems are initially fairly expensive, they pay for themselves in a year or two because they allow you to cut a runner from the process and employ him or her elsewhere in the court.

**STEP FOUR. Location.** There are several fine articles published by OCA that detail the ideal collection facility. Unfortunately, most of us do not have the luxury of starting with a clean slate. Where to locate collectors can be a real problem. First, they need to be outside of the secured area where money is taken. Second, they have to be in an area where there is adequate seating. And third, they have to have some security for themselves, as they often deal with difficult situations. In my case, I started with none of the above. Before I could get the program rolling, therefore, I had to remake a holdover cell into a collection room and “evict” the prosecutor from her office (at the cost of a much nicer office), so that I could have office space adjacent to the

courtrooms but outside the clerk’s offices. I then “borrowed” some benches to line the hallways, installed a security camera in each office and put a marshal’s station in the hallway. Both my bailiff and marshal can monitor the activities in the collection offices and respond quickly to any problems. Panic buttons are also a good idea.

**STEP FIVE. Furnishings.** At a minimum, each collector should have a desk, a computer, a printer (we purchased duplexing printers—they save both paper and file space), a copier (to make photocopies of driver’s licenses or ID cards, *etc.*), and a file cabinet. We have also installed a loudspeaker system and air filtration system in the area. (Remember, collection clerks are up close and personal with the general public all day long.) In one of my collection offices, we have installed a half door so that the collection clerk can have privacy when not interviewing and some added security when the hall is full of people. We have also given each of the collectors a digital camera to help in identification of persons who have no picture identification.

**MISCELLANEOUS.** Before you undertake the program, be sure that you’re satisfied with your financial information statement, and be sure that you have an adequate number of clipboards to handle even large dockets and a supply of pens or pencils. We opted to buy boxes of golf pencils. They’re cheap and adequate for the task of filling in applications. After each docket, somebody has to prepare for the next by restocking the clipboards, pencils and financial information statements.

### CONCLUSION

Establishing a good collections program takes time and it’s hard work. The time and effort will pay rewards, however. One year after we put our collections program in place in Pasadena, we can boast a 90% compliance ratio. As we continue to develop and refine our program, I expect that number will increase. Each

## COLLECTIONS CHECKLIST

- I. LOCATION (Outside of the secure area)
  - Think out the location before you make the move
  - Adequate waiting room and seating are essential
  - Need to provide security for collectors
    - Panic Button
    - Security Video
    - Marshal’s Station
- II. FURNISHINGS AND EQUIPMENT
  - Desk
  - Computer
  - Duplex Printer
  - Copier (for d/l, *etc.*)
  - Sound System
  - Waiting Area
  - Half Door
  - File Cabinet
  - Air Filter
  - Business Cards
  - Digital Camera
- III. MISCELLANEOUS
  - Forms
  - Clipboards
  - Golf Pencils
  - Applications – Sp/Eng
  - ATM
  - Signage
  - Runner – Pneumatic Tubes
- IV. MEASURING YOUR PERFORMANCE
  - Decide on your compliance ratio
  - Check it out before you start
  - Cradle to grave assignment
  - Rework docket

court is different. We’ve been privileged to have visitors from other parts of the state come to watch our process. I leave them with the same thought that I will leave with you: each court *is* different; I don’t expect that you will *adopt* the Pasadena plan, but you may find things that you can *adapt* for use in your own court. 🗡️

<sup>1</sup> S.B. 1863 would require cities with a population of over 100,000 to develop and implement a collections improvement program with the Office of Court Administration. As of June 3rd, the Governor had neither vetoed nor signed the bill.

enforcement and animal control involve investigations. Like peace officers, after the investigation is complete, the code enforcement or animal control officer files charges (sworn complaint) with the court. The court notifies the defendant of the charges.

Another question involving citations is what happens if the officer forgets to have the defendant sign the citation? The answer is nothing. The charge can still be filed. If the offense is a traffic offense in Subtitle C, Transportation Code, and the defendant fails to appear, the prosecutor cannot charge the defendant with the offense of violation of promise to appear because the defendant did not sign a promise to appear. But, the defendant

could be charged with the offense of failure to appear.

What many courts do not realize is that peace officers are not required to obtain a signature on a citation for offenses outside of Subtitle C, Transportation Code. Article 14.06(b), Code of Criminal Procedure, does not require the officer to obtain a signature when issuing a citation. In these cases, it does not matter whether there is a signature on the citation or not.

**Close**

If you have certain issues that you would like to see presented in this column or would like to be a guest columnist, please contact Margaret Robbins at 800/252-3718. 📧

**An E-Version of  
The Recorder**

Would you be interested in receiving an email version of *The Recorder*, instead of a paper copy sent by mail? This would help us conserve grant funds. It would be sent to you in an email as an attachment in pdf (Adobe) format.

If you would like to receive an email version instead of a paper copy, please email TMCEC at [tmcec@tmcec.com](mailto:tmcec@tmcec.com).

**TEXAS MUNICIPAL COURTS  
EDUCATION CENTER  
1609 SHOAL CREEK BLVD., SUITE 302  
AUSTIN, TX 78701  
[www.tmcec.com](http://www.tmcec.com)**

Presorted Standard  
U.S. Postage  
PAID  
Austin, Texas  
Permit No. 114

**TMCEC MISSION  
STATEMENT**

To provide high quality judicial education, technical assistance and the necessary resource material to assist municipal court judges, court support personnel and prosecutors in obtaining and maintaining professional competence.

**Change Service Requested**